



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 08, 2022

IN THE MATTER OF:

Appeal Board No. 623868

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 623866, 623867 and 623868, the claimant appeals from the decisions of the Administrative Law Judge, filed May 11, 2022, which (1) modified the initial determination holding the claimant ineligible to receive benefits, effective August 24, 2020 through May 23, 2021, on the basis that the claimant was not capable of work, to be effective August 25, 2020 through December 19, 2020, and, as so modified, sustained the initial determination; (2) modified the initial determination holding the claimant ineligible to receive benefits, effective July 27, 2020 through May 23, 2021, on the basis that the claimant was not available for employment, to be effective July 27, 2020 through July 31, 2020, and, as so modified, sustained the initial determination; and (3) modified the initial determination charging the claimant with an overpayment of \$13,104 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$6,300 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$8,568 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), to reflect recoverable overpayments consistent with the decisions, and as so modified, sustained the initial determination. The amount of the overpayments were referred back to the Department of Labor for recalculation.

At the combined telephone conference hearings before the Administrative Law

Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** On August 6, 2020, the claimant filed a claim for benefits, effective July 20, 2020. Shortly thereafter, the claimant began receiving unemployment benefits. The Department of Labor re-determined the claimant's eligibility and alleged that she was not capable and not available for employment and that she was overpaid regular and federal unemployment benefits. The initial determinations bore a date mailed of "March 30, 2022". There was no determination of willful misrepresentation.

**OPINION:** Pursuant to Labor Law § 597 (3), any determination regarding a benefit claim may, in the absence of fraud or willful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information.

The credible evidence fails to establish that the Department of Labor has the necessary jurisdiction to reach the merits in this case. The Department of Labor's redeterminations were issued on March 30, 2022, thereby permitting a review, in the absence of fraud or misrepresentation, beginning March 30, 2021. The Judge modified these determinations to be effective July 27, 2020 through July 31, 2020, and August 24, 2020 through December 19, 2020. A determination of willful misrepresentation is required to provide the authority for the Department to reach back to this period. However, in the case at hand, there is no such determination. Accordingly, we conclude that the Department of Labor lacks jurisdiction to issue the initial determinations and the merits of this case cannot be reached.

**DECISION:** In Appeal Board Nos. 623866, 623867 and 623868, the decisions of the Administrative Law Judge, insofar as appealed from, are reversed.

The initial determinations, holding the claimant ineligible to receive benefits, as modified, to be effective August 25, 2020 through December 19, 2020, on the basis that the claimant was not capable of work; holding the claimant ineligible to receive benefits, as modified, to be effective July 27, 2020 through July 31, 2020; and charging the claimant with an overpayment of \$13,104 in benefits recoverable pursuant to Labor Law § 597 (4); charging the

claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$6,300 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$8,568 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1,800 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to reflect recoverable overpayments consistent with the decisions, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER